

Plaintiff, complaining of Defendant, alleges and says:

- 1. Plaintiff, the North Carolina State Bar (hereafter "State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.
- 2. Defendant, Robert J. Burford (hereafter "Defendant" or "Burford"), was admitted to the North Carolina State Bar on 21 April 1980 and is an Attorney at Law subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.
- 3. During the relevant period referred to herein, Burford was actively engaged in the practice of law and maintained a law office in Raleigh, Wake County, North Carolina.
- 4. Burford represented thirteen plaintiffs in litigation against pharmaceutical company Merck for damages caused by the drug Vioxx. (These plaintiffs are hereafter referred to as "Vioxx clients").
- 5. Burford's Vioxx clients entered into contingent fee agreements with Burford, which provided that Burford's fee would be 40% of each client's recovery.
- 6. The claims of Burford's Vioxx clients were eventually made part of a mass tort action against Merck in federal court. (This federal litigation is hereafter referred to as "the Vioxx case").
- 7. In the Vioxx case, a limited number of lawyers were designated as "common benefit counsel." The common benefit counsel performed legal services for the benefit of all claimants, and the court noted that the "economies of scale" created by their work created "a highly efficient resolution procedure" in which individual attorneys

"need only enroll the claimants in the settlement and then carefully monitor their progress through the claims valuation process."

- 8. The federal court in the Vioxx case entered an order allocating 8% of each plaintiff's recovery to the common benefit counsel and 1% of each plaintiff's recovery for "common benefit expenses."
- 9. The federal court also limited individual attorneys' fees to 24%, regardless of the terms of the individual plaintiffs' fee agreements.
- 10. When Burford received settlements for his Vioxx clients, he presented them with settlement disbursement summaries that showed how much of their recovery would go to: (a) common benefit fees and expenses; (b) Burford for attorney's fees; (c) Burford for litigation costs and expenses; and (d) the client.
- 11. Burford provided his Vioxx clients with little or no explanation of what costs and expenses comprised the total amount shown on the disbursement summary.
- 12. Burford collected 24% of each Vioxx client's settlement as his attorney fee, but he charged the Vioxx clients inflated amounts for "costs and expenses."
- 13. For eleven of his Vioxx clients, the total amount to which Burford claimed entitlement equaled or exceeded 40% of the clients' settlement proceeds.
- 14. Burford paid a paralegal on a contract basis to assist him with the Vioxx clients' cases. Burford paid the paralegal approximately \$3,800.00 per month to work for him full-time.
- 15. Burford collectively charged his Vioxx clients at least \$292,000.00 for costs he attributed to the paralegal's services.
- 16. Burford only paid the paralegal approximately \$154,000.00 for her work on the Vioxx cases.
- 17. In support of the amounts shown on the disbursement summaries as payable to Burford for "costs and expenses," Burford presented some Vioxx clients with invoices from the paralegal. The invoices reflected hourly billing at \$100.00 per hour.
- 18. Burford directed the paralegal to prepare invoices for the Vioxx clients reflecting a \$100 hourly rate.
- 19. Burford did not pay the paralegal on an hourly basis, nor did her monthly salary from Burford amount to \$100.00 per hour.
- 20. The invoices purportedly reflecting paralegal expenses were false and misleading, in that they did not reflect the amount Burford actually paid for the paralegal's services.

- 21. Burford consulted with an expert witness in connection with the Vioxx case. He paid the expert a total of \$3,500.00 for the consultation.
- 22. Burford charged five of his Vioxx clients a total of \$4,500.00 for costs he attributed to expert witness fees. He did not apportion costs attributable to expert fees amongst all of the Vioxx clients.
- 23. Burford charged one Vioxx client \$1,000.00 purportedly attributable to Burford's "travel costs" associated with the Vioxx case. He did not apportion costs attributable to his travel expenses amongst all of the Vioxx clients.
- 24. Burford collectively charged his Vioxx clients at least \$62,460.00 for a cost he denominated a "class notice." What Burford referred to as a "class notice" was actually the advertising through which Burford solicited potential clients in the Vioxx case.
- 25. The advertising through which Burford solicited potential clients in the Vioxx case was not an expense incurred for the benefit of the Vioxx clients and therefore should not have been included in the costs and expenses assessed to the Vioxx clients.
- 26. Burford was not entitled to collect from his Vioxx clients any money in excess of his 24% fee plus actual costs and expenses incurred for the benefit of the clients.
- 27. Burford provided false and misleading information about litigation costs and expenses to his Vioxx clients in order to obtain additional money to which he was not entitled.
- 28. Burford artificially inflated the amount he collected from the Vioxx clients for "costs and expenses" in order to circumvent the court's order capping individual attorney's fees at 24%.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. § 84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of his actions as follows:

- a) By asserting entitlement to client funds in excess of his 24% fee plus his actual costs and expenses, by failing to apportion expenses proportionately amongst his Vioxx clients, and by seeking to collect from clients expenses that were not incurred for their benefit, Burford charged clearly excessive fees and/or clearly excessive amounts for expenses in violation of Rule 1.5(a);
- b) By providing his Vioxx clients with little or no explanation of the costs and expenses they were expected to pay from their settlement funds, Burford failed to explain the basis of expenses for which the clients would be responsible in violation of Rule 1.5(b);

- c) By directing his paralegal to prepare invoices that falsely stated that she charged \$100 per hour, and by presenting those invoices to his clients, Burford ordered a non-lawyer assistant to engage in conduct that would violate the Rules of Professional Conduct in violation of Rule 5.3(c) and engaged in conduct involving dishonesty, deceit, or misrepresentation in violation of Rule 8.4(c);
- d) By providing false and misleading information about litigation costs and expenses to his Vioxx clients in order to obtain additional money to which he was not entitled, Burford committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer—to wit: obtaining property by false pretenses—in violation of Rule 8.4(b), and engaged in dishonesty, deceit, or misrepresentation in violation of Rule 8.4(c); and
- e) By artificially inflating the amount he charged the Vioxx clients for "costs and expenses" in order to circumvent the court's 24% cap on individual attorney's fees, Burford knowingly disobeyed an obligation to the tribunal in violation of Rule 3.4(c) and intentionally prejudiced his clients during the representation in violation of Rule 8.4(g).

WHEREFORE, Plaintiff prays that

- 1. Disciplinary action be taken against Defendant in accordance with N.C.G.S. § 84-28 (c) and 27 N.C.A.C. 1B § .0114 as the evidence on hearing may warrant;
- 2. Defendant be taxed with the administrative fees and with actual costs permitted by law in connection with the proceeding; and
 - 3. For such other and further relief as the Hearing Panel deems appropriate.

This the 12 day of January, 2011.

Ronald G. Baker, Chair

Grievance Committee

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